IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 24TH AUGUST 2007 / 2ND BHADRA 1929

WP(C).No. 33452 of 2006(G)

PETITIONER:

PADMANABHAN, S/O.KRISHNAN,
AGED 84, BLOCK NO.302, MOONNUMUKKU P.O.,
CHAKKAMALA, PANGODE, KOTTARAKKARA.

BY ADV. SRI.J.OM PRAKASH

RESPONDENTS:
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1. THE STATE OF KERALA, REPRESENTED
BY THE PRINCIPAL SECRETARY TO GOVERNMENT,
GENERAL ADMINISTRATION DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR, ALAPPUZHA.

BY GOVERNMENT PLEADER SRI. K.V. MANOJ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 33452/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE PATTA DT. 29/4/72 TO THE PETITIONER BY THE TAHSILDAR, KOTTARAKKARA.

EXT.P2. COPY OF THE CERTIFICATE DT. 7/3/91 OF THE TAHSILDAR, KOTTARAKKARA.

EXT.P3. COPY OF THE APPLICATION AND THE ORDER OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, CHERTHALA DT. 12/5/81.

EXT.P4. COPY OF THE CERTIFICATE BY SRI. P.K. CHANDRANANDAN, EXE. MLA DT. 5/3/83.

EXT.P5. COPY OF THE REPRESENTATION OF THE PETITIONER DT. 25/09/06.

EXT.P6. COPY OF THE CERTIFICATE OF SRI. H.K. CHAKRAPANI DT. 20/09/06.

EXT.P7. COPY OF THE EXTRACT OF THE CONVICT REGISTER RELATING TO SRI. H.K. CHAKRAPANI BY THE SUPERINTENDENT OF CENTRAL JAIL DT. NIL.

EXT.P8. COPY OF THE CENTRAL PENSION ORDER OF SRI. H.K. CHAKRAPANI BY THE UNDER SECRETARY TO GOVT. OF INDIA DT. 14/6/03.

EXT.P9. COPY OF THE LETTER BY THE R2 DT. 13/10/2006.

RESPONDENT'S EXHIBITS **NIL.**

True copy

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T.R.RAMACHANDRAN NAIR, J.

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WP(C).No. 33452 of 2006-G.

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Dated this the 24th day of August, 2007.

J U D G M E N T

The petitioner is an applicant for the grant of Kerala Freedom Fighters Pension. The claim is based on his participation in the Punnapra-Vayalar Struggle. He was an accused in Case No.P.E.8/1122 M.E. of the First Class Magistrate Court, Cherthala. The said Court issued a non-bailable warrant against the petitioner and in order to evade the arrest the petitioner went underground from 8.3.1122 to 7.3.1123 ME.

2. For the very same suffering he was granted Patta for two acres of land in Survey No.551/1/302/A.B of Mancode Village evidenced by Ext.P1. In Ext.P2 the Tahsildar, Kottarakkara has certified that this assignment is in view of the fact that he was a participant in Punnapra-Vayalar struggle.

3. The first application of the petitioner is stated to be filed on 24.8.1979 even though the same is denied by the respondent in its counter-affidavit. Ext.P3 is the non-availability of records certificate from the Judicial First Class Magistrate Court, Cherthala and Ext.P4 is the certificate issued by Sri.P.K.Chandranandan, Ex-M.L.A. The petitioner submitted a further representation Ext.P5 and produced the personal knowledge certificate issued by Sri.H.K.Chakrapani, a prominent freedom fighter and

recipient of Central Freedom Fighters Pension; the order granting Central pension to him and also a copy of the convict register relating to Sri.H.K.Chakrapani.

4. In the counter-affidavit the stand taken is that as the first application of the petitioner is not received, in the light of Government Circular dated 31.12.1993 unless documentary evidence to prove warrant of arrest etc., are submitted the application cannot be considered.

5. Going by the scheme in the absence of official records the applicant is entitled to produce the personal knowledge certificate of another prominent freedom fighter along with the non-availability of records certificate. The same will be sufficient for considering the claim on merits. The Circular dated 31.12.1993 cannot defeat the rights of the petitioner for grant of pension if he is eligible under the scheme. The Circular cannot go against the provisions of the scheme as the original scheme does not provide that only if there is documentary evidence such as warrant of arrest, court records and jail records alone, pension will be sanctioned.

6. In *R.Narayanan v. Union of India* (AIR 1990 SC 746), the Hon'ble Supreme Court has held that, after a long number of years the freedom fighters cannot be compelled to produce official records to sustain the claim for sanction of pension. As regards the cut of date provided by Circular dated 31.12.1993 also it is axiomatic the same cannot defeat the right

of the petitioner in the light of the principles stated in *Mukund Lal Bhandari v. Union of India* (1993 SC 2127). The Apex Court has held that the application has to be accepted irrespective of the date of application and the date if any prescribed can only be treated as a matter of administrative convenience than as a rigid time limit. The said findings rendered in para.4 are extracted below:

> **"As regards the contention that the petitioners had filed their applications after the date prescribed in that behalf, we are afraid that the Government stand is not justifiable. It is common knowledge that those who participated in the freedom struggle either at the national level or in the erstwhile Nizam State, are scattered all over the country and most of them may even be inhabiting the remotest parts of the rural areas. What is more, almost all of them must have now grown pretty old, if they are alive. Where the freedom fighters are not alive and their widows and the unmarried daughters have to prefer claims, the position may still be worse with regard to their knowledge of the prescribed date. What is more, if the Scheme has been introduced with the genuine desire to assist and honour those who had given the best part of their life for the country, it ill-limitation against such claims. In fact, the Government, if it is possible for them to do so, should find out the freedom fighters or their dependents and approach them with the pension instead of requiring them to make applications for the same. That would be the true spirit of working out such Schemes. The Scheme has rightly been renamed in 1985 as the Swatantra Sainik Samman Pension Scheme to accord with its object. We, therefore, cannot countenance the plea of the Government that the claimants would only be entitled to the benefit of the Scheme if they made applications before a particular date notwithstanding that in fact they had suffered the imprisonment and made the sacrifices and were thus otherwise qualified to receive the benefit. We are, therefore, of the view that whatever the date on which the claimants make the applications, the benefit should be made available to hem. The date prescribed in any past or future notice inviting the**

> **claims, should be regarded more as a matter of administrative convenience than as a rigid time-limit."**

Therefore, delay cannot be a ground to reject an application by a freedom fighter.

7. Apart from that it is well settled that a Circular cannot whittle down or restrict the provisions of a statute, rule, notification, etc. For all these reasons the stand taken in the counter-affidavit cannot be accepted. There will be a direction to the respondents to consider the application of the petitioner along with supporting materials on its merit and pass appropriate orders within two months from the date of receipt of a copy of this judgment. The application will also be considered in the light of Exts.P1 and P2 which evidences the fact that the petitioner was granted those benefits based on his participation in the Punnapra-Vayalar struggle.

The writ petition is disposed of as above. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-